

# EXHIBIT A

Page 1

1

2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE DISTRICT OF DELAWARE

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5 JEFFREY M. NORMAN,  
6 Plaintiff,  
7 vs.  
8 DAVID W. ELKIN, RICHARD M.  
SHORIN and THE ELKIN GROUP,  
9 INC.,

10 Defendants.

11 and

12 US MOBILCOMM, INC.,  
13 Nominal Defendant.

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17 DEPOSITION OF JEFFREY M. NORMAN  
18 New York, New York  
19 Friday, December 8, 2006

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22

23

24 Reported by:

LESLIE FAGIN

25 JOB NO. 9289

2 December 8, 2006  
3 7:59 a.m.  
4  
5 Videotaped Deposition of JEFFREY M.  
6 NORMAN, held at the offices of Blank  
7 Rome, 405 Lexington Avenue, New York, New  
8 York, pursuant to Notice and Federal  
9 Rules of Civil Procedure, before Leslie  
10 Fagin, a Notary Public of the State of  
11 New York.

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IT IS HEREBY STIPULATED AND AGREED,  
by and between the attorneys for the  
respective parties herein, that filing  
and sealing be and the same are hereby  
waived.

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the  
form of the question, shall be reserved  
to the time of the trial.

11 IT IS FURTHER STIPULATED AND AGREED  
12 that the within deposition may be sworn  
13 to and signed before any officer  
14 authorized to administer an oath, with  
15 the same force and effect as if signed  
16 and sworn to before the Court.

1 APPEARANCES:  
2 COZEN O'CONNOR  
3 Attorneys for Plaintiff  
4 Suite 1400  
5 Chase Manhattan Centre  
6 1201 North Market Street  
7 Wilmington, Delaware 19801-11  
8  
9 BY: DAVID A. FELICE, ESQ.  
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Page 5

THE VIDEOGRAPHER: Here begins videotape No. 1 in the deposition of Jeffrey Norman in the matter of Norman versus Elkin in the U.S. District Court, District of Delaware.

Today's date is December 8, 2006.

The time is 7:59 a.m.

This deposition is being taken at  
Blank Rome, 405 Lexington Avenue, New  
York, New York, made at the request of  
Mark Evetts of the law offices of Mark  
Evetts.

The videographer is Peter Ledwith on behalf of Esquire Deposition Services located 216 East 45th Street, New York, New York.

Would counsel and all present  
please identify themselves.

MR. EVETTS: Mark Evetts. I represent Mr. David Elkin, Richard Shorin, The Elkin Group, the defendants.

MR. FELICE: David Felice of Cozen O'Connor representing the plaintiff, Jeffrey Norman.

2 (Pages 2 to 5)

**ESQUIRE DEPOSITION SERVICES  
302-426-9857**

<p>1           J. Norman  2 J E F F R E Y M. N O R M A N, called as a  3 witness, having been duly sworn by a  4 Notary Public, was examined and  5 testified as follows:  6 EXAMINATION BY  7 MR. EVETTS:  8   Q. Would you please state your full  9 name for the record?  10   A. Jeffrey Moore Norman.  11   Q. Mr. Norman, when do you contend Mr.  12 Elkin breached his agreement with you to  13 invest \$750,000 in USM?  14   A. When I discovered that he had not  15 funded the company according to our original  16 agreement.  17   MR. EVETTS: Objection. Not  18 responsive.  19   Q. The question wasn't when did you  20 discover, the question was when did he breach  21 it. That is, when, in your opinion, based on  22 the agreement you contend existed in this  23 case, when was he obligated to invest  24 \$750,000 and when did he fail to fulfill that  25 obligation?</p>	<p>Page 6</p> <p>1           J. Norman  2 testimony, breached his agreement to invest  3 his equity into USM by the fall of 1994, is  4 that fair?  5    MR. FELICE: Objection as to form.  6    A. Well, I would call it that he  7 breached his commitment to contribute his  8 money that I understood would be happening at  9 the time that I contributed the money.  10   Q. And that breach occurred by the  11 fall of 1994?  12   A. By the fall of --  13   Q. I'm doing that. I know you put in  14 your money June 2, 1994. I think your  15 testimony was you expected him to put up his  16 money contemporaneous or within a reasonable  17 period of time after that, so I'm tacking on  18 three or four months.  19   A. That's true.  20   Q. So by the fall of 1994, Mr. Elkin  21 breached his commitment to put in his  22 investment in USM, is that right?  23    MR. FELICE: Objection as to form.  24    A. In my mind, I don't know the legal  25 terminology, but in my mind, as a</p>
<p>1           J. Norman  2    MR. FELICE: Objection. Compound.  3    Q. Let's start with the first one.  4    When was he obligated, under the  5 oral agreement you're suing under in this  6 lawsuit, to invest \$750,000?  7    A. At the time that I contributed my  8 portion.  9    Q. And I've got a document here that  10 will reflect this, but would you agree with  11 me that that was then around June 2, 1994?  12   A. I contributed my \$250,000 at that  13 particular time, yes.  14   Q. And so it is your contention that  15 Mr. Elkin's obligation to contribute \$750,000  16 was due and ripe at that moment?  17   A. It was my understanding at that --  18 based on our conversation that when I put in  19 my contribution, he was going to put in his  20 contribution, if not that day, then within a  21 reasonable amount of time.  22   Q. A reasonable amount of time being  23 within a month, two, three months?  24   A. That was my understanding, yes.  25   Q. And so Mr. Elkin, by your</p>	<p>Page 7</p> <p>1           J. Norman  2 businessman, yes.  3    Q. Okay. And you knew by the fall of  4 1994 that Mr. Elkin hadn't put up his  5 \$750,000, didn't you?  6    A. I don't remember the exact date,  7 but I discovered a few months after that,  8 when he didn't volunteer it to me, but I  9 asked him if he contributed his money and he  10 told me no, but he was going to be doing it  11 shortly.  12   Q. And when was the next time you  13 became aware that he didn't live up to that  14 representation or that promise?  15   A. Well, after that point in time,  16 I -- it was a long time ago, but, so I can't  17 give you an exact date, but I remember during  18 that time period that I might have seen a  19 selective document that had a capital  20 contribution chart that, you know, that  21 didn't show him putting in the money. I  22 don't know -- I never actually got any kind  23 of documentation ever to this day, no cash  24 check statements or anything that -- of what  25 money was put in by Mr. Elkin.</p>

3 (Pages 6 to 9)

<p>1           J. Norman  2 with, so on an overriding basis, I didn't  3 feel as though he had, in my mind, breached  4 our entire agreement. It was maybe the  5 capital contribution part.  6    Q. I want to get back to that  7 response, in particular, your  8 characterization of an entire agreement.  9       I want to understand what that  10 means, but before I get there, was there ever  11 a moment in time when your relationship had  12 developed to the point that you subjectively  13 believed he had not lived up, Mr. Elkin had  14 not lived up to his promise?  15      MR. FELICE: Objection. Asked and  16 answered.  17      A. In our business relationship you're  18 talking about?  19      Q. Let's make this simple. I'm going  20 to be talking today about each of your causes  21 of action.  22      As far as I can recall, your first  23 cause of action is breach of contract, so  24 right now, all we're talking about is  25 whatever, let's get this straight, there is</p>	<p>Page 14</p> <p>1           J. Norman  2    A. At that particular point in time,  3 at that moment in time, I felt, in my mind,  4 that from a business point of view, he didn't  5 live up to our agreement, our oral agreement  6 of putting in money.  7       As far as our overall business  8 contract or arrangement, whatever you want to  9 call it, I felt that predominantly, that the  10 business arrangement was positive enough to  11 continue.  12      Q. So I think I understand from your  13 answer you're standing on your testimony that  14 you understood by the fall of '94 or very,  15 very early part of '95, he had at least  16 breached the part of your oral agreement to  17 invest his money?  18      A. That's correct.  19      Q. Now, let's talk about the agreement  20 in its entirety.  21      What are the components of this  22 oral agreement, what were the mutual  23 promises?  24      A. Mr. Elkin, I had an ongoing  25 business in New York with a gentleman Mr. Tom</p>
<p>1           J. Norman  2 no writing for your oral contract, nobody  3 signed a contract?  4    A. That's correct.  5    Q. So it's breach of an oral contract,  6 right?  7    A. Right.  8    Q. And so an oral contract is proved  9 up by whatever you two gentlemen say that  10 agreement is, right?  11    A. Correct.  12    Q. Right now, you're the guy saying  13 what it is?  14    A. Uh-huh.  15    Q. So I'm asking you, based on the  16 oral agreement you contend was breached, was  17 there a moment in time when you realized Mr.  18 Elkin had failed to live up to his end of the  19 bargain under that oral agreement?  20      MR. FELICE: Objection to form.  21      A. Are you talking about the capital  22 contribution part of the agreement?  23    Q. I'm talking about the oral  24 agreement you allege Mr. Elkin is in breach  25 of.</p>	<p>Page 15</p> <p>1           J. Norman  2 Fiorita, offices on 1330 Avenue of the  3 Americas. The company was doing maybe 650 to  4 a million dollars a year in revenue.  5      Mr. Elkin approached me and wanted  6 to get together. He had just sold his cable  7 operation and had a concept about securing  8 some licenses in the last lottery spectrum.  9 He said, let's get together and I believe he  10 came to the Plaza Hotel in New York, let's  11 get together and he said, here is my idea,  12 that there is last lottery part of the  13 auction, 220 spectrum, let's put together a  14 company and aggregate licenses together. The  15 split will be -- this is basically the first  16 time we met, 25 percent, 75 percent.  17      At that particular time, I don't  18 recall a capital figure and this is probably  19 early 1993, maybe even late 1992, we had this  20 conversation in New York. No capital was  21 really discussed except for the fact you are  22 going to contribute 25 percent and I will be  23 responsible for 75 percent and the discussion  24 was primarily my job was going to be go out  25 and put together marketing plans, to secure</p>

5 (Pages 14 to 17)

<p>1 J. Norman  2 the licenses, figure out how to maybe  3 strategize in terms of aggregate for a  4 marketing pattern to create value.  5 Mr. Elkin's responsibilities, as he  6 relayed to me, as an attorney, he was going  7 to be able to handle the legal stuff.  8 Also with his financing background,  9 that he was going to raise capital for the  10 project and as his, you know, as an ex-chief  11 operating officer, he was also going to  12 handle that responsibility for the company  13 and that was our basic understanding.  14 The second piece of that is time --  15 so it was decided at that point in time,  16 basically within a month or two, do you want  17 to work on that project? I said, yes, he  18 understood I had another business, so I was  19 allocating time to this project and as time  20 went on throughout 1993, things evolved in  21 formulating the industry, I can't recall  22 whether the options took place then, but, you  23 know, the plan to aggregate the license with  24 cities to go after and then by the end of the  25 year, we started rough discussions about --</p>	<p>Page 18</p> <p>1 J. Norman  2 Q. So you had this agreement that you  3 would co-own USM in the ratio of 75/25,  4 right?  5 A. Right.  6 Q. You had an agreement that the two  7 of you, I'm not going to try to summarize all  8 the different skill sets Mr. Elkin has versus  9 your skill sets, but, essentially, you guys  10 have an agreement that you would co-operate  11 USM?  12 MR. FELICE: Objection as to form.  13 Q. Based on each of your respective  14 skill sets?  15 A. I did operations, but I wasn't --  16 my job was to secure the licenses.  17 Q. I'm not trying to use a term of art  18 here. I'm just talking about you were going  19 to both run the business?  20 A. In a loose sense, you could say  21 that.  22 Q. And, eventually, there was an  23 addendum to that agreement or a  24 supplementation to that agreement where the  25 amount of necessary capital was settled upon</p>
<p>1 J. Norman  2 primarily he did, what type of capital was  3 going to be needed and as I recall, the first  4 figure was less than a million dollars when I  5 signed on board, so it was also understood  6 that at that particular time, money that we  7 had put out for the business was going to be  8 counted towards our capital contribution and  9 that, I think, is a basis for our -- what was  10 the basis for our agreement.  11 Q. I'm going to try to kind of parse  12 through that. These are sort of the terms or  13 elements that I heard.  14 Initially, no agreement about how  15 much money -- the initial agreement was about  16 just respective ownership percentages, 75/25?  17 A. I don't know I would call it an  18 agreement at that point in time. I would  19 call it Mr. Elkin's proposal.  20 Q. I heard from your answer that you  21 reached an agreement on the 25/75 before you  22 ever even knew how much money would be  23 associated with that?  24 A. Yeah, he might have thrown a figure  25 out, we will put in half a million dollars.</p>	<p>Page 19</p> <p>1 J. Norman  2 at a million, was that about right?  3 A. That's right.  4 Q. Was there any discussions in this  5 agreement about sort of how long you would  6 both be obligated to run the business, i.e.,  7 a year, two, 10?  8 A. No.  9 Q. Was there any understanding as to  10 what would happen if one of you quit running  11 the business, but the other guy continued  12 running the business?  13 A. No.  14 Q. Was there any discussions about how  15 long either or both of you could work without  16 receiving any compensation from the company?  17 A. Was there any discussions about  18 that? Potentially, possibly, it seems like  19 something that might have -- we might have  20 talked about, but I don't recall any details  21 of that.  22 Q. Just so the jury is clear, as far  23 as the agreement we've just described, there  24 was no discussion about who was going to get  25 paid what, nobody was getting paid?</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 62</p> <p>1           J. Norman  2   A. It doesn't cure the fact that he  3 breached it when he was supposed to put it  4 in.  5   Q. But that's a breach that took place  6 now 11 years ago, right?  7   MR. FELICE: Objection as to form.  8   A. At that particular time, yeah.  9   Q. You do know, whether you know it or  10 not, you're charged with knowing it, do you  11 know the statute of limitations has run years  12 and years and years ago on that --  13   MR. FELICE: Objection as to form.  14   If you have a question, he can answer.  15   If it doesn't call for legal conclusion,  16   you can ask it.  17   MR. EVETTS: He has constructive  18 knowledge of the law, every word  19 written.  20   Q. Do you know the statute of  21 limitations has run on breach of contract?  22   MR. FELICE: Objection as to form.  23   Calls for legal conclusion.  24   Q. He is not instructing you not to  25 answer, so you have to answer.</p>	<p style="text-align: right;">Page 64</p> <p>1           J. Norman  2 breach of contract --  3   Mr. FELICE: Objection as to form.  4   Calls for attorney/client privilege.  5   Don't answer that.  6   Q. Are you going to follow your  7 counsel's instruction?  8   MR. FELICE: I just instructed him  9 not to answer. Move on.  10   MR. EVETTS: Don't tell me what to  11 do, Mr. Felice. I've been taking  12 depositions when you were a senior in  13 high school.  14   Q. Are you going to follow your  15 counsel's instructions?  16   A. Yes, sir.  17   MR. FELICE: Don't badger my  18 client.  19   Q. Isn't it true, Mr. Norman, you also  20 knew, you say it happened by happenstance,  21 but you learned that USM had sold licenses  22 from Mr. Elkin, isn't that right?  23   A. Yes.  24   Q. You learned it because you called  25 him on the phone and you asked him, right?</p>
<p style="text-align: right;">Page 63</p> <p>1           J. Norman  2   A. Do I know that? You just told me  3 that. I know you're a good attorney.  4   Q. You've been involved in some  5 lawsuits, you know what a statute of  6 limitations is?  7   MR. FELICE: Let's move on. If you  8 want to tell him what it is, that's  9 fine, but you're asking for a legal  10 conclusion.  11   Q. Look, a client who brings a lawsuit  12 not only is on constructive knowledge of the  13 statute of limitations, they have a duty to  14 know when the statute of limitations runs.  15   MR. FELICE: Objection as to form.  16   Q. Otherwise it's a malicious  17 prosecution, if you bring a lawsuit with no  18 basis under the law, you can be sued for  19 that.  20   MR. FELICE: Objection as to form.  21   Don't answer. He is calling for  22 disclosure of attorney/client privilege.  23   Q. From your understanding of statute  24 of limitations and causes of action, you  25 don't have any idea that your 11 year old</p>	<p style="text-align: right;">Page 65</p> <p>1           J. Norman  2   A. No, I didn't ask -- well, I guess  3 over time I did. I called him because I  4 hadn't heard anything and it was probably  5 over a year. Any information, despite some  6 requests, and I was driving in Pennsylvania  7 for business one day and I said I'm going to  8 call him up and see what's going on, haven't  9 heard anything, haven't gotten any  10 information, I get him on the telephone,  11 after the pleasantries, I said, what is going  12 on with the company? He said, nothing, and  13 it was like an interrogation. I said, do we  14 still have all our licenses? He said, well,  15 no, and then I said, did we sell any  16 licenses, and he said, yes, and I said,  17 where? Oh, I think we sold a couple in Miami  18 and in Boston. I said, well, how much did we  19 get? I don't recall exactly, a few hundred  20 thousand dollars. Then I said, did you take  21 a distribution, and he said, yes, I did. I  22 said, how come you didn't tell me about it?  23 He said, it wasn't your turn, and I said, why  24 don't you send me the information you got?  25 He said, okay. Hung up the phone, didn't</p>

<p>1 J. Norman  2 hear anything from him.  3 Q. And didn't that occur in like early  4 2000?  5 A. It occurred right before Mr. Sama  6 sent him a letter.  7 Q. Right before?  8 A. Shortly before. I can't recall the  9 exact timing of it. I called Mr. Sama up to  10 tell him about it.  11 Q. You know that Mr. Sama's letter  12 went to Mr. Elkin in October 2002?  13 A. I would like to see it to refresh  14 my memory. I haven't looked at that stuff in  15 a year.  16 Q. You don't know that?  17 A. I want to say yes, but I don't want  18 to say something that -- can I ask Mr. Felice  19 if that's true?  20 THE WITNESS: Is that true?  21 MR. FELICE: What was the question?  22 Q. You know Mr. Sama's letter went to  23 Mr. Elkin in October 2002?  24 A. I want to say yes.  25 MR. FELICE: I believe it's that</p>	<p>Page 66</p> <p>1 J. Norman  2 A. I don't even think he told me who  3 he sold them to.  4 Q. But you know today?  5 A. Yes.  6 Q. And in the same conversation he  7 told you about the Romer transaction?  8 MR. FELICE: Objection.  9 A. He told me we got rid of some  10 licenses in Miami and Boston and it was a  11 couple hundred thousand dollars, I believe  12 were his words.  13 Q. And so we're clear about when that  14 conversation took place, do you recall a  15 trial in a related case in the 220 action?  16 A. The one you talked about earlier  17 today, the Warren trial.  18 Q. I'm talking about the trial before  19 I was involved in this case, the 220 action  20 in the Vice Chancellor --  21 A. Sure.  22 Q. You remember that trial?  23 A. Sure I do.  24 Q. You remember you testified at the  25 trial?</p>
<p>1 J. Norman  2 time.  3 A. I will say that.  4 Q. Now that you know that, it's your  5 testimony this conversation with Mr. Elkin  6 took place shortly before that, is that  7 right?  8 A. Yeah, I don't know how far in  9 advance, but it was before that, yes.  10 Q. Shortly before that?  11 A. I don't know. To be honest with  12 you, I'm just guessing.  13 Actually, it might have been. I  14 don't think I would -- I would give Mr.  15 Elkin, knowing me, I probably gave him more  16 than enough time to produce it and it  17 actually might have been a while before that  18 now that I think back on it, where I got up  19 my -- I got pissed off enough where I said,  20 he is still not sending me anything and I  21 just had it with all the requests and no  22 response and that's when I went to Mr. Sama.  23 Q. And in that same conversation, you  24 learned about the Repeater transaction,  25 right?</p>	<p>Page 67</p> <p>1 J. Norman  2 A. I remember I testified at the  3 trial.  4 Q. I will try to refresh your  5 recollection of how long before the Sama  6 letter went out that you talked to Mr. Elkin.  7 Here is the question. This is page  8 167, line 11:  9 What were your reasons for having  10 this letter delivered to the company?  11 Your answer: I have been  12 unsuccessful in getting any kind of  13 information that was satisfactory to me,  14 dated October, probably for the previous 24  15 months and actually prior to that, I had  16 discovered there was a sale of assets that,  17 you know, I kind of discovered by  18 happenstance and apprised Mr. Elkin on that.  19 Do you recall that you learned  20 about the sale of the assets more than 24  21 months before the Sama letter went out?  22 A. I don't know. That doesn't  23 sound -- that paragraph there, to be honest  24 with you, as I sit here today, I can't tell  25 you the exact time that I called him.</p>

18 (Pages 66 to 69)

<p>1 J. Norman  2 Q. Where could we look --  3 A. Twenty-four months.  4 Q. Do you have notes at home of the  5 conversation where Mr. Elkin told you he sold  6 the licenses --  7 A. Actually, I probably could track it  8 back because I was doing some work for a  9 technology company that was out of the other  10 part of Pennsylvania, so I would have to go  11 to my diaries and maybe I can track it back  12 looking at e-mails about meetings out in that  13 part of the state because I didn't go out  14 there a lot.  15 Q. Based on when you knew you worked  16 for the technology company, can you give us a  17 better estimate of when you had that  18 conversation with Mr. Elkin?  19 A. I would have to check my diaries to  20 pin it down, but I know the sequence was I  21 talked to him on the telephone, I didn't get  22 the document, I went to Mr. Sama.  23 Q. Here is what you say at the 220  24 trial. The question was --  25 MR. FELICE: What page are you on?</p>	<p>Page 70  1 J. Norman  2 Q. If you talked to Mr. Elkin any time  3 before the then Sama letter went out, which I  4 think is uncontroverted you did?  5 A. That's true.  6 Q. And he revealed he had sold  7 licenses and he revealed to you what you now  8 know are the Repeater and Romer transactions,  9 right?  10 A. I don't recall the names of the  11 companies he sold them to, but I remember he  12 said he got rid of some licenses, sold some  13 license.  14 Q. He told you in that same  15 conversation that he had made a distribution  16 to himself, right, and you certainly knew --  17 A. I don't know if he used the word  18 distribution, but I asked him if money was  19 distributed and I didn't get any and there  20 are own two shareholders.  21 Q. You knew you didn't get any?  22 A. Exactly.  23 Q. Mr. Sama's letter went out more  24 than three years before you filed this  25 lawsuit. It is uncontroverted you knew,</p>
<p>1 J. Norman  2 MR. EVETTS: I'm on page 192.  3 Q. Just to put it in context, this is  4 when the cross-examination first began after  5 Mr. Felice passed the witness.  6 Good afternoon, Mr. Norman. My  7 name is Elizabeth Wilburn.  8 You responded, hi.  9 She asked you the very same  10 question I asked you, Mr. Norman, the demand  11 letter in this case is dated -- this is your  12 later demand letter, October 2004?  13 A. This says 2004. I think we sent  14 two, I think we sent two demand letters.  15 Q. You sent a demand letter --  16 A. There was some legal thing, I had  17 to send one and then he also sent one, so I  18 think there were two. As I recall there were  19 two letters because we didn't get -- in the  20 first demand letter, we didn't get -- in our  21 minds, enough information and that's what  22 kind of triggered the whole thing and as I  23 recall, there were -- Mr. Sama sent him a  24 couple of letters and then there was a formal  25 demand letter that went out.</p>	<p>Page 71  1 J. Norman  2 prior to that, sometime prior to that, that  3 Mr. Elkin sold licenses and made a  4 distribution, if I represent to you the  5 longest statute of limitations available to  6 you, and I don't think that it will even  7 apply is three years, how aren't all those  8 claims barred by the statute of limitations?  9 MR. FELICE: Objection. Calls for  10 legal conclusion.  11 A. That's a legal conclusion that I  12 guess will be answered. All I know is from  13 my point of view is he told me I couldn't get  14 the information from him and that was, I  15 think, evident in a lot of these things we've  16 been talking about for Mr. Elkin.  17 Stretch, stretch, stretch. Give as  18 little as possible, hedge the bet and not  19 provide. Instead, most business situations  20 I'm in, you ask the question, yeah, sure, I  21 sold Miami 10 licenses, it was -- I know he  22 remembered exactly what he did. He has got a  23 mind for that. I sold it for 350, whatever  24 the sale price was, I sold the other one 10  25 licenses for X and it was closed on this day,</p>

<p style="text-align: right;">Page 78</p> <p>1 J. Norman  2 assets it owned were licenses, right?  3 MR. FELICE: Objection as to form.  4 A. Right.  5 Q. So if there is a capital gain, by  6 definition, it has to be sale of a license?  7 MR. FELICE: Objection as to form.  8 A. Yeah.  9 Q. Let's take a look. I'm going to  10 hand you what was previously marked PX-7.  11 This is a copy of the US Mobilcomm, Inc.'s  12 2000 tax return.  13 If you'll look at the K-1 for you,  14 which is Bates stamped MC 543, the second to  15 last page.  16 Do you see that?  17 A. MC 543, I'm looking at it.  18 Q. That's your K-1?  19 A. Yeah.  20 Q. You received it?  21 A. Yeah.  22 Q. You probably received that around  23 March 2001?  24 A. That's when it's supposed to be  25 sent out, yeah.</p>	<p style="text-align: right;">Page 80</p> <p>1 J. Norman  2 major benefit from owning your stock in US  3 Mobilcomm, you had an ordinary loss, right?  4 A. Yeah, a lot of years.  5 Q. But this a bad year because you  6 have to pay, double, you have to pay taxes on  7 two different line items, so you knew the  8 minute you received this, that US Mobilcomm  9 had sold licenses, didn't you?  10 MR. FELICE: Objection as to form.  11 A. No, I guess so if I look at it now,  12 but I think you're overdramatizing the effect  13 on my reaction to it when I got it. I think  14 I just put it in the stack with my accounting  15 stuff for the tax guy. I didn't jump on the  16 phone right away and say, oh, my God, we sold  17 all the licenses of the company, let me find  18 out what's going on.  19 Q. You may call it overdramatization,  20 but I've got news for you, statute of  21 limitations, accruals, causes of action,  22 sometimes it doesn't even matter if you know,  23 but if there a chance for you to know, i.e.,  24 tax returns showing taxable income from the  25 sale of licenses, whether you actually dawnd</p>
<p style="text-align: right;">Page 79</p> <p>1 J. Norman  2 Q. Did you normally get them when they  3 were supposed to be sent out?  4 A. Sometimes I didn't, actually.  5 Q. This is a bad year because this is  6 one of the few years that you had to actually  7 pay income taxes on ordinary income.  8 Do you see?  9 A. Yes.  10 Q. But this is a doubly bad year  11 because you also have a net long term capital  12 gain, don't you?  13 A. Where does it say that?  14 Q. Next to the biggest number on the  15 page.  16 A. Are we looking -- 16,000 total for  17 the year?  18 Q. Yeah.  19 A. Okay, yeah.  20 Q. So the minute you received this,  21 given that it imposed whatever your personal  22 tax rate is on that ordinary income, plus  23 whatever the capital gains tax rate is, this  24 is a bad year for you, you have to pay --  25 I've seen plenty of years where you had a</p>	<p style="text-align: right;">Page 81</p> <p>1 J. Norman  2 on you or not, you knew?  3 MR. FELICE: Objection to form. If  4 you have a question, you can ask him a  5 question. Stop badgering my witness.  6 Q. Did you have a response to that?  7 MR. FELICE: Is there a question?  8 A. I didn't know when I read this tax  9 return. Maybe I was supposed to, but I did  10 not know.  11 THE WITNESS: Can we take a break  12 at some point in time.  13 MR. EVETTS: Right now.  14 THE VIDEOGRAPHER: The time is 9:23  15 a.m. We're off the record.  16 (Recess.)  17 THE VIDEOGRAPHER: 9:33. On the  18 record.  19 Q. Back to your claims, Mr. Norman, of  20 the breach of contract. I want to go back to  21 the first one, failing and refusing to  22 provide Norman with complete access to USM's  23 corporate business financial accounting books  24 and records.  25 By what date did Mr. Elkin breach</p>

<p>1                   J. Norman  2    facts.  3    MR. EVETTS: That is appropriate to  4    assume certain facts. Do you not know  5    that?  6    MR. FELICE: You are saying, assume  7    that US Mobilecomm didn't have that. If  8    you want to take the oath and testify,  9    go ahead. If you want to put a document  10   in front of him, go ahead.  11   Q. If USM -- how was USM ready to  12   participate in auction 18 if it lacked the  13   finances to make the required upfront payment  14   to the FCC? Just tell the jury that, simple  15   question.  16   A. There were a lot of variables  17   involved with the auction and give me the  18   date for that again.  19   Q. The auction?  20   A. Yes.  21   Q. September 18, 1998.  22   A. I wasn't involved with the company  23   at that point in time and I hadn't gotten any  24   documents after I left, so it was my  25   assumption, because I had no communication</p>	<p>Page 94</p> <p>1                   J. Norman  2    document from USM?  3    A. I'm saying I don't know if I did.  4    Q. You didn't look at it, you just  5    sent it onto Mark Hatten?  6    A. I probably would have looked at it.  7    Q. You're sitting there telling me  8    your big complaint is you can't get enough  9    financial information. Now, you get a  10   full-blown balance sheet and P&amp;L and you're  11   not going to study it a little bit?  12   A. I don't know if it was or not. I  13   would have to look at it. I remember seeing  14   something the other day from the exhibits,  15   something for Mark Hatten, a fax. There was  16   some financial information. It's still  17   regarding my answer to the auction. I don't  18   agree with your supposition.  19   Q. My supposition is very simple. If  20   USM didn't have any money, was it ready to  21   participate in the auction?  22   MR. FELICE: Objection as to form.  23   A. I didn't believe that to be the  24   case.  25   Q. I didn't ask you whether you</p>
<p>1                   J. Norman  2    when I left, the company was ready for the  3    auction.  4    Q. What do you mean you hadn't gotten  5    any documents after you left? You know now,  6    from reviewing documents, that there were  7    contracts, financial statements, lists of  8    licenses, lists of equipment being  9    transferred from USM to Centenial with blind  10    copies going to Vincent Sama. We had Vincent  11    Sama editing purchase agreements. You know  12    there were tons of documents regarding USM  13    financial condition that you were privy to.  14    A. The documents, we only got the  15    purchase and sale agreement from Mr. Elkin,  16    we didn't get any -- the financial documents  17    you're describing.  18    Q. When you were acting as liaison  19    between USM and Mark Hatten in the fall of  20    1998, you weren't getting financial documents  21    then?  22    A. I think I might have gotten one  23    that I just sent to Mr. Hatten. You would  24    have to show it to me.  25    Q. You're saying you got a financial</p>	<p>Page 95</p> <p>1                   J. Norman  2    believed that to be the case.  3    I asked you, if USM did not have  4    any money, could it have participated in the  5    auction?  6    MR. FELICE: Objection. Form.  7    Foundation.  8    A. Probably.  9    Q. What?  10   A. Probably, it could have.  11   Q. Let's talk about that. Let me ask  12   you something else, too.  13   Are you taking a position in this  14   lawsuit that -- let me start back, scratch on  15   that.  16   You followed USM and some of its  17   progress through the FCC, right?  18   A. Through the FCC auction, the  19   auction 18, I did.  20   Q. You had some testimony, and I've  21   got some documents here that say I've been  22   following the document through the FCC  23   website.  24   A. I followed auction 18 through the  25   FCC, yes, I did.</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 J. Norman  2 Q. So you knew that USM was a  3 qualified bidder?  4 A. Yes.  5 Q. To know that, you saw -- the same  6 document that lists USM as a qualified bidder  7 lists the 200,000 upfront deposit?  8 A. Yes.  9 Q. You also, by following that  10 auction, you also knew they were the high  11 bidder on five different licenses, right?  12 A. Yes.  13 Q. And let me show you what I'm  14 marking Norman Exhibit 4.  15 (Document marked Norman Exhibit 4  16 for identification.)  17 Q. Isn't this a facsimile transmittal  18 sheet from you to Mark Hatten and David  19 Kleeman dated December 15, 1998?  20 A. Well, I can't say definitely  21 because there is no fax number on here, plus  22 it says total of pages 3, including the  23 cover, and there are four, so I can't say  24 definitely yes, but what's the question?  25 Q. This is your document, right, you</p>	<p style="text-align: right;">Page 100</p> <p>1 J. Norman  2 Q. At this point in time, you were the  3 one that told Mr. Elkin that Mark Hatten and  4 his company had an interest in buying,  5 acquiring, investing in US Mobilcomm, right?  6 A. Yes.  7 Q. You acted as liaison between US  8 Mobilcomm and Mark Hatten and his company?  9 A. For the introduction, I did.  10 Q. They must have asked you for some  11 financial information, didn't they?  12 A. I just put him in touch with Mr.  13 Elkin.  14 MR. EVETTS: Objection. Not  15 responsive.  16 Q. Did Mr. Hatten ask you for  17 financial information on the company?  18 A. I don't recall.  19 Q. Did you provide this financial  20 information to Mr. Hatten on the company?  21 A. I don't recall.  22 Q. Look at the next page, it's the  23 balance sheet for US Mobilcomm dated November  24 16, 1998, is that right?  25 A. The one that says draft on it?</p>
<p style="text-align: right;">Page 99</p> <p>1 J. Norman  2 produced this document, right?  3 A. I did.  4 MR. FELICE: I can represent PFT is  5 the plaintiff's production.  6 Q. This is your own document from your  7 own files representing your copy of something  8 you sent to Mark Hatten, right?  9 A. That's what I said. I can't tell  10 you for sure that I did send it to him. If  11 we produced it, I had it in my files. If you  12 look on the top, I say, click here, type, I  13 didn't finish it and there is no fax  14 confirmation and no fax number on it and the  15 page is wrong, so I can't say 100 percent  16 yes, but let's assume --  17 Q. Mr. Norman, you worked, after you  18 left USM in late '96 or early '97, the person  19 you went to work for is Mark Hatten?  20 A. I did some consulting. I didn't go  21 to work for him. Brief consulting for him.  22 Q. At this point in time, you've lost,  23 you know this, you lost the Centennial deal,  24 right?  25 A. Yes.</p>	<p style="text-align: right;">Page 101</p> <p>1 J. Norman  2 Q. Yes.  3 A. Yes.  4 Q. This came from your files?  5 A. I assume so.  6 Q. So this had to be provided to you  7 at sometime around the date on that document,  8 right?  9 A. Yes.  10 Q. Will you tell the jury how much  11 cash US Mobilcomm has in both the checking  12 and money market account at this point?  13 A. According to this document, it has  14 got 10,300.  15 Q. Where in this document, by the way,  16 does it make note that USM either owns some  17 phase 2 licenses or has a \$200,000 deposit at  18 the FCC?  19 A. Nowhere on this page.  20 Q. If you had been following USM on  21 the FCC website and you know or you think it  22 has \$200,000 at the FCC or by this time, has  23 five licenses, why wouldn't that raise a red  24 flag with you, where is that 200,000, where  25 are those licenses?</p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 106</p> <p>1 J. Norman  2 speculation.  3 A. I can't speculate on that.  4 Q. Look --  5 A. I certainly would have liked that  6 telephone call. I would like that  7 opportunity.  8 Q. I happen to have a very detailed  9 report on you, Mr. Norman, which includes  10 your small claims judgments from clothing  11 stores and God knows what else, gas  12 companies, tax liens on your home.  13 You're telling me you don't know  14 for sure whether in the latter part of 1998,  15 you had an extra \$50,000 laying around?  16 A. I don't think that's the point.  17 The point is whether I wanted to take the  18 opportunity.  19 When I first went into the venture,  20 I didn't have the whole \$250,000 at that time  21 either, but I took advantage of it and got  22 that for the business opportunity.  23 MR. EVETTS: Objection.  24 Nonresponsive.  25 Q. Do you know that Mr. Elkin, in the</p>	<p style="text-align: right;">Page 108</p> <p>1 J. Norman  2 MR. FELICE: Objection as to form.  3 A. Probably yes.  4 Q. Probably yes?  5 A. Yes.  6 Q. August 1998?  7 A. Yeah, I could have raised the cash.  8 Q. I didn't ask you that.  9 I want to know, did you have the  10 cash?  11 MR. FELICE: Objection as to form.  12 A. I don't know. I would have to look  13 back. This is a long time ago.  14 Q. The two of you had been trying to,  15 quote, raise the cash, as you just said, for  16 years, so if you could have raised the cash,  17 why didn't you?  18 MR. FELICE: Objection. Asked and  19 answered.  20 A. Why didn't we raise the cash?  21 Q. Why didn't you raise it? You said  22 you could have raised it.  23 A. We did have a couple of potential  24 companies that wanted to raise cash for us.  25 Q. I can show you 50 attempts to raise</p>
<p style="text-align: right;">Page 107</p> <p>1 J. Norman  2 months, really in the years leading up to  3 this auction, had been trying to raise the  4 money for US Mobilcomm to participate  5 meaningfully in the phase 2 auctions, did you  6 know that?  7 A. I know we were both trying to raise  8 the money.  9 Q. At some point, Mr. Elkin had to  10 decide, as the deadline is approaching, to  11 put your money up or shut up. At some point,  12 he has to say, nobody is going to come  13 through, at some point if nobody comes up to  14 the table, you have to take the matter in  15 your own hands, right?  16 MR. FELICE: Objection as to form.  17 A. I can't answer for Mr. Elkin.  18 Q. My point to you, it's a simple  19 question, not whether you would have wanted  20 the call, whether you would have wanted the  21 opportunity, had a call come to you in August  22 1998, if we're going to do this, I need your  23 50,000 and I need it now, were you in the  24 financial position to send that \$50,000 to  25 the company?</p>	<p style="text-align: right;">Page 109</p> <p>1 J. Norman  2 cash that Mr. Elkin engaged in, but my  3 question is, you just said to me, I think I  4 could have given the 50,000 because I believe  5 I could have raised it. If you could have  6 raised the money, why didn't you?  7 MR. FELICE: Objection. Asked and  8 answered.  9 A. We weren't raising \$50,000 for the  10 company, we were raising a couple of million  11 dollars for the company and we had problems  12 doing that and it turned out some of those  13 problems with some of the people in New York  14 that I talked to after the fact -- I got some  15 feedback from numerous people that they  16 didn't want to put money in because Mr. Elkin  17 had a reputation of being a difficult person  18 to deal with.  19 MR. EVETTS: Objection.  20 Nonresponsive.  21 Q. You know, raising money for a  22 privately held company always requires a  23 certain connection with the founders, doesn't  24 it?  25 A. Yes.</p>

<p>1 J. Norman  2 that?  3 A. That's his business, that's his own  4 personal business and he has a right to do  5 that and I -- you know, his personal money, I  6 have nothing to say about it.  7 Q. That's an interesting point. Let  8 me ask you this...  9 MR. EVETTS: Let's take a break.  10 THE VIDEOGRAPHER: 10:07. Off the  11 record. End of tape 1.  12 (Recess.)  13 THE VIDEOGRAPHER: 10:14. On the  14 record. Beginning of tape 2.  15 Q. You talk a lot in your complaint  16 about what it means to be, quote, a qualified  17 bidder for auction 18.  18 Do you recall that?  19 A. Yes.  20 Q. And the fact that USM was a  21 qualified bidder, right?  22 A. Yes.  23 Q. Do you understand whether the  24 primary qualification, in accordance with the  25 FCC guidelines for filling out an</p>	<p>Page 114</p> <p>1 J. Norman  2 So my point is, if, in fact, USM  3 qualified only by the grace of David Elkin  4 because he put up his personal money, when he  5 took away his personal money, USM would no  6 longer qualify to bid at that auction, would  7 they?  8 MR. FELICE: Objection.  9 Foundation.  10 A. If there was no money there as a  11 deposit, they wouldn't, no.  12 Q. Let me get back to the point where  13 you said it was his money, he could do what  14 he wants to with it.  15 Have you ever started a business  16 from scratch yourself?  17 A. Uh-huh.  18 Q. Where you were the sole  19 shareholder?  20 A. Yes.  21 Q. And have you experienced, like many  22 startup businesses, during that first year,  23 it's hard to pay all the bills or as you  24 start adding employees, it's hard to make  25 payroll and all that good stuff?</p>
<p>1 J. Norman  2 application, is putting up a deposit  3 sufficient to cover the licenses you  4 anticipate bidding on?  5 A. Yes.  6 Q. So the primary, quote, factor for  7 US Mobilcomm was the ability to put up the  8 upfront deposit, right?  9 A. Right.  10 Q. And so if, as you already said, if  11 it turns out in this case, under the facts,  12 that USM didn't put up the 200,000, it didn't  13 have the 200,000, Mr. Elkin put up the  14 200,000, regardless of what FCC things, USM  15 wasn't qualified to bid at the auction,  16 right?  17 MR. FELICE: Objection.  18 A. Say that again.  19 Q. It's really simple. You said that  20 if USM didn't have the money, Mr. Elkin  21 didn't have any obligation to put it up,  22 right, if he did put it up, just to hold  23 their spot, he could change his mind and take  24 it back, as you put it, it's his money, he  25 could do what he wants to with it, right?</p>	<p>Page 115</p> <p>1 J. Norman  2 A. Yes.  3 Q. From time to time, have you just  4 had to forego your own salary or compensation  5 or, for that matter, put in money to make  6 other people's payrolls?  7 A. Yes.  8 Q. And in that situation, what is it  9 your expectation, let's just say, January 1st  10 rolls around, not enough money in the bank to  11 make payroll, I've heard about that a bunch  12 of times in my past experience, not enough  13 money to make payroll, you have to go write a  14 check and put it in your company's bank  15 account, \$10,000 to make that payroll.  16 You've done that in the past?  17 A. Yes.  18 Q. What is your expectation when the  19 company becomes better off, becomes more  20 flush, a big sale or big receivable comes in,  21 would you expect to be able to get back that  22 \$10,000 you put in to cover the payroll?  23 A. Hopefully, yes.  24 Q. And would you expect that, even if  25 you didn't enter into any kind of formal loan</p>

<p>1           J. Norman  2 opposed to, you're just saying you never  3 talked about it?  4    A. A concept and generalities, I'm not  5 opposed to, no.  6    Q. So as we sit here today, now that  7 it's been 10 years since you've left, do you  8 think David should be entitled to some sort  9 of an adjustment for putting in an extra 10  10 years into the company than you did?  11    MR. FELICE: Objection.  12    Foundation.  13    A. No, I don't.  14    Q. You don't?  15    A. No, I don't.  16    Q. I thought you just said yes.  17    A. You asked me a hypothetical  18 question in life, okay. You're asking me  19 specific.  20    Q. Telling me why, in this situation,  21 putting in an additional 10 years isn't worth  22 the same?  23    A. Because, first of all, he never  24 communicated so -- we were holding licenses.  25 Okay. There is not a lot of work involved</p>	<p>Page 174</p> <p>1           J. Norman  2    Q. Do you have any idea what the  3 aggregate site rental fees were when you  4 maxed out the number of licenses the company  5 either owned or managed?  6    A. I've got an idea.  7    Q. What is it?  8    A. Anywhere from a couple hundred to  9 \$1,000 a month, maybe.  10   Q. So how much was it a month to just  11 keep up with your contractual obligations?  12   A. It's hard to -- I can't sit here  13 this second because some of the licensees  14 were paying that amount themselves.  15   Q. Let's throw out a number. If it  16 was 30,000 a month to cover site rental fees  17 for 50 licenses, plus your construction  18 requirements, plus your subscriber  19 requirements, do you have any idea what the  20 high watermark was for USM subscriber  21 revenues or revenues of any kind from  22 operations?  23   A. Anywhere from 60 to a hundred  24 thousand annually.  25   Q. Annually, so 5,000 to 8,000 a</p>
<p>1           J. Norman  2 with that.  3    Q. Mr. Norman, and --  4    A. And Rick Shorin was getting paid  5 out of the company costs to do a lot of the  6 day to day stuff besides being a CFO.  7    Q. You do know before you went out  8 because this was your forte, you were the  9 person responsible for aggregating the  10 licenses?  11   A. Uh-huh.  12   Q. So you do know that as you  13 aggregated these licenses, you made  14 commitments to pay site rental fees, right?  15   A. Right.  16   Q. And you also know, under the SEC  17 rules, there were deadlines to get the  18 licenses constructed so they wouldn't be  19 forfeited, you knew that, right?  20   A. Yes.  21   Q. You also knew there were FCC rules  22 that required having subscribers on the  23 system by certain periods or you would  24 forfeit or lose the licenses?  25   A. Yes.</p>	<p>Page 175</p> <p>1           J. Norman  2 month?  3    A. Yes.  4    Q. If your site rental fees are 30,000  5 a month, plus you've got to install a half  6 million dollars worth of equipment, plus you  7 have to continually work to bring subscribers  8 and keep subscribers on the system so you  9 don't forfeit everything you sunk all that  10 money into, that's an ongoing separate  11 operating business with ongoing financial  12 obligations, isn't it?  13   A. Yes, but I think you're mixing the  14 time up on the build out and constructing on  15 that.  16   I believe when I left the company,  17 most of that stuff was already done because  18 we were involved with that, too, Tom and I.  19   Q. But when the company --  20   A. So --  21   Q. When the company never manages to  22 generate sufficient cash flow to pay even a  23 fraction of its ongoing bills, who do you  24 think has to deal with the creditors, the  25 people that aren't being paid, the equipment</p>

<p>1           J. Norman  2    to give you the courtesy.  3    MR. FELICE: If you're not  4    finished, it may not make sense for me  5    to question him and if you are given the  6    right to recall this witness, we will  7    address it then. If not, we'll address  8    it through other evidence. Thank you.  9    THE VIDEOGRAPHER: This is the end  10   of deposition of Jeff Norman and the  11   time is 12:04 p.m. This is the end of  12   tape No. 2.  13    (Time noted: 12:04 p.m.)  14  15  16            <u>JEFFREY M. NORMAN</u>  17  18 Subscribed and sworn to before me  19 this ____ day of _____, 2006.  20  21 _____  22  23  24  25 </p>	<p>Page 198</p> <p>1  2 -----INDEX-----  3 WITNESS           EXAMINATION BY   PAGE  4 JEFFREY M. NORMAN    MR. EVEITS    6  5  6 -----EXHIBITS-----  7           NORMAN    FOR ID.  8        1           45  9        2           43  10      3           54  11      4           98  12      5           130  13      6           134  14      7           134  15      8           134  16      9           143  17      10          156  18  19  20  21  22  23  24  25 </p>
<p>1  2           C E R T I F I C A T E  3 STATE OF NEW YORK    )  4               : ss.  5 COUNTY OF NEW YORK    )  6  7        I, LESLIE FAGIN, a Notary Public  8    within and for the State of New York, do  9    hereby certify:  10      That JEFFREY M. NORMAN, the witness  11    whose deposition is hereinbefore set  12    forth, was duly sworn by me and that such  13    deposition is a true record of the  14    testimony given by the witness.  15      I further certify that I am not  16    related to any of the parties to this  17    action by blood or marriage, and that I  18    am in no way interested in the outcome of  19    this matter.  20      IN WITNESS WHEREOF, I have hereunto  21    set my hand this 14th day of December,  22    2006.  23  24            <u>LESLIE FAGIN, RPR</u>  25 </p>	<p>Page 199</p>

51 (Pages 198 to 200)